

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOHN GARRETT SMITH,

Plaintiff,

v.

SANDRA ALDRIDGE, *et al.*,

Defendants.

CASE NO. 3:19-cv-05600-RBL-JRC

ORDER ON MISCELLANEOUS  
MOTIONS

This matter has been referred to the undersigned by the District Court. *See* Dkt. 64. The matter is before the Court on plaintiff's motion to compel (Dkt. 55), motion for a subpoena (Dkt. 56), motion for new evidence and to add a defendant (Dkt. 65), motion challenging a court order (Dkt. 66), and second motion to compel (Dkt. 72), all of which are ripe for the Court's review and are denied for the reasons set forth herein.

**BACKGROUND**

Plaintiff brings suit for damages against nine defendants related to his Public Records Act (ch. 42.56 RCW) request to the Washington State Department of Corrections ("DOC") for audio

1 evidence allegedly held by the Vancouver Police Department. *See* Dkt. 11, at 5. This matter  
2 was initially referred to Magistrate Judge David W. Christel but has since been re-assigned to the  
3 undersigned. *See* Dkt. 64.

#### 4 **MOTION TO COMPEL**

5 The Court considers plaintiff's two motions to compel together because the second  
6 motion to compel appears to be a reply in support of the first. *See* Dkts. 55, 72.

7 Under the Court's Local Rules—

8 Any motion for an order compelling disclosure or discovery must include a  
9 certification, in the motion or in a declaration or affidavit, that the movant has in  
10 good faith conferred or attempted to confer with the person or party failing to make  
11 disclosure or discovery in an effort to resolve the dispute without court action. The  
12 certification must list the date, manner, and participants to the conference. *If the*  
13 *movant fails to include such a certification, the court may deny the motion without*  
14 *addressing the merits of the dispute.* A good faith effort to confer with a party or  
15 person not making a disclosure or discovery requires a face-to-face meeting or a  
16 telephone conference. If the court finds that counsel for any party, or a party  
17 proceeding *pro se*, willfully refused to confer, failed to confer in good faith, or  
18 failed to respond on a timely basis to a request to confer, the court may take action  
19 as stated in CR 11 of these rules.

20 Local Civil Rule ("LCR") 37(a)(1) (emphasis added).

21 Plaintiff's motion to compel includes no such certification. *See* Dkts. 55, 72. Plaintiff is  
22 well aware of the requirement, having been informed on at least one other occasion of this  
23 Court's meet-and-confer requirement. *See* Dkt. 37, at 1, *Smith v. Haynes*, 3:19-cv-05394-RBL  
24 (W.D. Wash. March 12, 2020). Therefore, plaintiff's motion to compel (Dkts. 55, 72) is denied.

#### 20 **MOTION FOR SUBPOENA**

21 Plaintiff requests that the Court issue a subpoena duces tecum directing a defendant to  
22 produce a video record of plaintiff's arraignment and his cell phone. Dkt. 56, at 5.

1 A subpoena is not a substitute for discovery directed to a party. “A subpoena duces  
2 tecum, under [Federal] Rule [of Civil Procedure] 45, is not intended as a substitute for a motion  
3 to produce under Rule 34, where, as in this case, the subpoena requires production of documents  
4 under the control of [a party to the action], as distinguished from documents in the possession  
5 and control of an independent witness.” *Wirtz v. Local Union 169, Int’l Hod Carriers’ Bldg. &*  
6 *Common Laborers’ Union of Am., AFL-CIO*, 37 F.R.D. 349, 351 (D. Nev. 1965).

7 Because plaintiff seeks production of documents from a defendant in this matter, the  
8 Court denies his motion for a subpoena.

9 **MOTION TO ADD NEW EVIDENCE AND NEW DEFENDANT**

10 Plaintiff requests that the Court consider new evidence (certain letters related to his  
11 public disclosure request) and add “Olga Dacy” as a defendant in this action. *See* Dkt. 65, at 1.

12 Plaintiff has already filed this same motion with the Court. *See* Dkt. 4. Magistrate Judge  
13 David W. Christel—to whom this case was previously referred—denied the Order but noted that  
14 the Court would consider evidence if relevant to a pending motion. Dkt. 17, at 2. Consistent  
15 with Magistrate Judge Christel’s Order, the Court will consider plaintiff’s evidence in issuing a  
16 report and recommendation on the pending summary judgment motion. *See* Dkt. 43. However,  
17 plaintiff is advised that in the future, if he wishes to have the Court take evidence into account  
18 when ruling on dispositive motions, he should file the evidence as an attachment to either his  
19 motion or his response to a dispositive motion (such as a summary judgment motion).

20 Inasmuch as plaintiff requests that a new defendant (“Olga Dacy”) be added, Magistrate  
21 Judge Christel previously informed plaintiff that the Court would not allow him to amend his  
22 complaint unless he provided a proposed amended complaint with his motion, in accordance  
23  
24

1 with the Local Rules. *See* Dkt. 17, at 2–3. Plaintiff has not done so, and therefore the Court  
2 denies his motion.

### 3 **MOTION CHALLENGING COURT ORDER**

4 Plaintiff has filed a “motion challenging court order”—a motion that appears to be a  
5 request for reconsideration of Magistrate Judge Christel’s order denying plaintiff’s previous  
6 motion requesting that the Court direct certain persons to respond. *See* Dkt. 62, at 2–3. In  
7 particular, plaintiff asserts that Magistrate Judge Christel erred in concluding that “Olga Dacy”  
8 could not be directed to respond since she had not properly been added to the lawsuit as a  
9 defendant. *See* Dkt. 66, at 1.

10 “Motions for reconsideration are disfavored. The court will ordinarily deny such motions  
11 in the absence of a showing of manifest error in the prior ruling or a showing of new facts or  
12 legal authority which could not have been brought to its attention earlier with reasonable  
13 diligence.” LCR 7(h)(1). Plaintiff fails to show manifest error in the prior ruling—Magistrate  
14 Judge Christel correctly pointed out that because plaintiff failed to comply with the requirements  
15 to amend his complaint, Olga Dacy was not a defendant, and a non-party could not be directed to  
16 respond to the complaint. Therefore the motion for reconsideration is denied.

### 17 **NOTICE TO PLAINTIFF**

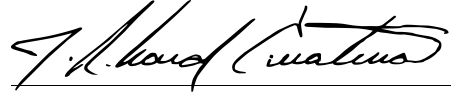
18 The Court notes that plaintiff continues to file duplicative and frivolous filings in this  
19 matter. The Court again directs Plaintiff to refrain from excessive filing. If Plaintiff files any  
20 duplicative motion requesting the same relief as requested in a previously filed motion that has  
21 previously been considered and denied, the Court may strike the motion without additional  
22 comment.

23 ///

**CONCLUSION**

Plaintiff's motions are denied. Dkts. 55, 56, 65, 66, 72. The Court will separately issue a report and recommendation on the pending summary judgment motion. *See* Dkt. 43.

Dated this 25th day of June, 2020.

A handwritten signature in black ink, appearing to read "J. Richard Creatura", written over a horizontal line.

J. Richard Creatura  
United States Magistrate Judge